

As recommended by the Ordinance Committee to the Council on 1/5/09 for 2d reading

Councilor Ashe,
CEDO, Code Enforcement, Ordinance Committee

Eight

HOUSING -
Minimum Housing Amendments related to Lead Paint

That Chapter 18, Housing, of the Code of Ordinances of the City of Burlington be and hereby is amended by amending Sections 18-2, 18-25, 18-72 thereof and adding Sec. 18-112 thereto to read as follows:

Sec. 18-2. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations, shall have the meanings given herein:

EMP shall mean essential maintenance practices required by section 1759 of title 17 of the Vermont Statutes Annotated.

Pre-1978 rental units shall mean rental units constructed prior to 1978.

Pre-1978 dwelling unit shall mean dwelling units constructed prior to 1978.

Pre-Renovation Rule means the EPA 406b Rule, or any subsequent superseding rule that is in effect and applicable, that relates to renovations performed in pre-1978 housing which are performed for compensation. For purposes of this definition, "renovation" means any modification of all or part of any existing structure in the housing that disturbs painted surfaces. "Renovation" includes : removal or modification of painted surfaces, components, or structures, surface preparation activities (i.e. sanding/scraping/other activities that may create paint dust) or window replacement. "Compensation" is the receipt of anything of value and may include exchanges of money, goods, or services or the payment of rent to landlords or property managers.

Balance of Section as written.

HOUSING -
Minimum Housing Amendments related to Lead Paint

Sec. 18-25. Orders.

Where any inspection of the property by a duly authorized city code official, fire inspector, law enforcement officer or health officer indicates that a violation of [the chapters listed below] exists, the inspecting officer or his delegate shall issue a written order notifying the party responsible of the existence of the violation and the measure required to correct or eliminate it as soon as possible.

Table Insert. As written.

Where there is a violation which materially affects health and safety, the enforcement officer will also notify the affected occupants of the rental units of the existence of said violation. At the discretion of the agency, the order may require the violations to be corrected within ~~thirty (30)~~ sixty (60) days or less unless otherwise noted in this code or require that the premises be vacated and secured until the dwelling or dwelling unit meets the standards of this chapter. The latter requirement shall be based on a finding that the premises are a serious danger to the health, welfare and safety of the occupants ~~of~~ or the general public. Orders may further direct:

(1) through (5) As written.

Sec. 18-72. Floors, interior walls and ceilings.

The interior of a structure and its equipment shall be maintained structurally sound and in a sanitary condition so as not to pose a threat to the health and safety of the occupants and to protect the occupants from the environment.

(a) As written.

(b) As written.

(c) Lead-based paint ~~with a lead content of more than five tenths (0.5) per cent~~ shall not be applied to any interior or exterior surface of a dwelling or dwelling unit, including fences and outbuildings at these locations. For the purposes of this ordinance, lead-based paint means the same as "lead-based paint" in Title 18, chapter 38 of the Vermont Statutes.

Sec. 18-112. Paint.

(a) Painted surfaces generally.

(1) All windows, walls, floors, doors, or other surfaces, interior or exterior, of a dwelling shall be free from deteriorated painted surfaces equal to or greater than 1 square foot in the aggregate. "Deteriorated painted surfaces" are those surfaces which are peeling, chipping, chalking, cracking, damaged or similarly deteriorated. "Deteriorated paint" means the same as the term is defined in Title 18, chapter 38 of the Vermont Statutes.

As recommended by the Ordinance Committee to the Council on 1/5/09 for 2d reading

(2) Owner(s) of pre-1978 rental housing units shall conduct a visual assessment of each unit annually and at tenant turnover for the presence of deteriorated painted surfaces, and will promptly and safely repair and/or stabilize all deteriorated surfaces, within 30 days, if more 1 square foot of interior room or 1 square

3

HOUSING -

Minimum Housing Amendments related to Lead Paint

foot of exterior wall surface is found or reported damaged. If exterior deteriorated paint was found or reported after November 1, the owner shall have until the following May 31 to repair and/stabilize area(s), provided that access to surfaces and components with lead hazards and areas directly below the deteriorated surfaces is clearly restricted. A record of visual assessments and repair and/or stabilization shall be kept on the affidavit of performance of essential maintenance practices (EMPs) required by subsection (h).

(3) Owners shall keep the outdoor areas of pre-1978 rental housing units free from visible paint chips.

(b) Lead-based paint.

The presence of lead-based paint in and around dwellings is a substantial health hazard which necessitates that special safety activities be used when working in and around lead-based paint. All paint shall be presumed to be lead-based paint (LBP) when present on all dwellings constructed prior to January 1, 1978 unless the paint was found to be not lead-based by a Vermont certified lead testing inspector who has issued a report to the owner of their findings. Property owner(s) wishing to be exempt from all LBP compliance activities under this ordinance must submit a copy of the certified inspectors' written report showing the dwelling to be free of LBP to the Code Enforcement Office.

(c) Lead safe work practices

(1) Interior lead safe work practices. All activities to all pre-1978 rental units and all pre-1978 owner-occupied dwelling units in which a child under the age of 6 years resides that disturb more than 1 square foot of painted interior surface(s) shall be done using Lead Safe Work Practices (LSWP) which take all reasonable precautions against the generation and spreading of lead dust, paint chips and debris. Interior LSWP include, but are not limited to, limiting access of work area(s) to workers only; protecting occupant belongings by covering them with 6 mil plastic sheeting or removing them from the work area(s); segregating work area(s) from clean area(s) by hanging plastic sheeting in doorways and/or window areas; covering the floor(s) of work area(s) with adequate amounts (extended at least 5 ft from work area) of 6 mil plastic sheeting to capture all dust, paint chips and debris; using vacuums with high efficiency particulate air (HEPA) filters attached to scrapers; wetting surfaces with water prior to disturbing the surface(s) (do not dry scrape); misting dust and debris with water prior to sweeping and cleaning (do not dry sweep); cleaning shoes and clothing when leaving work area(s); using personal protective equipment as needed, such as a HEPA respirator, gloves and coveralls. Certification that interior lead safe work practices were used must be made by the person doing the work on a form provided by the Code Enforcement Office and kept on file with the owner of the property for one year from the completion of the activity.

(2) Exterior lead safe work practices. All activities to pre-1978 dwellings that disturb more than 1 square foot of painted exterior surface(s) shall be done using LSWP which take all reasonable precautions against the generation and spreading of lead dust, paint chips and debris. Exterior LSWP

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include, but are not limited to; limiting access of work area(s) to workers only; attaching 6 mil plastic sheeting to dwelling and extend at least 10' (if possible) or as far as to be adequate to capture all dust, paint chips and debris (plastic sheeting to be misted with water, rolled up and thrown away each night); cover gardens, sand boxes and play areas with adequate amounts of 6 mil plastic sheeting; closing all

4

HOUSING - Minimum Housing Amendments related to Lead Paint

windows and doors on the side being scraped; closing all windows and doors on neighboring properties within 10' of work area(s); using vacuums with HEPA filters attached to scrapers; wetting surfaces with water prior to disturbing the surface(s) (do not dry scrape); cleaning shoes and clothing when leaving work area(s); using personal protective equipment as needed, such as a HEPA respirator, gloves and coveralls. Ground cover surrounding pre-1978 dwellings that have undergone disturbances of more than 1 sf on any exterior painted surface must be free from all visible paint chips, dust, or debris.

Certification that exterior lead safe work practices were used must be made by the person doing the work on a form provided by the Code Enforcement Office and kept on file with the owner of the property for one year from the completion of the activity.

(d) Prohibited work practices. The following practices are not allowed for use on pre-1978 dwellings:

- (1)dry scraping;
- (2)open flame burning;
- (3)uncontained power washing;
- (4)heat guns operated above 1,100 degrees Fahrenheit;
- (5)uncontained sandblasting;
- (6)power sanding (unless fitted with a HEPA filter);and
- (7)chemical stripping using products containing methylene chloride.

Certification that prohibited work practices were not used must be made by the person doing the work on a form provided by the Code Enforcement Office and kept on file with the owner of the property.

(e) Enforcement of lead safe work practices. In addition to all the other enforcement powers authorized by this chapter, inspectors shall have the authority to issue a stop work order if unsafe or prohibited work practices are being performed on a pre-1978 dwelling.

(f) Lead safe cleaning practices. All activities to all pre-1978 rental properties and all pre-1978 owner-occupied dwelling units in which a child under the age of 6 years resides that disturb more than 1 square foot of painted interior surface(s) shall be followed by a specialized cleaning that employs techniques effective in collecting lead dust, paint chips and debris. These techniques shall include, but are not limited to; wet sweeping; using vacuums with HEPA filters; wet scrubbing and wiping of surfaces numerous times with disposable towels; using a multi-bucket system when mopping; and using lead specific or other effective detergents. Certification that lead safe cleaning practices were used must be made by the person doing the work on a form provided by the Code Enforcement Office and kept on file with the owner of the property for one year from the completion of the activity.

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(g) Installation of vinyl or metal inserts. Owner(s) of pre-1978 rental housing units shall install vinyl or metal inserts in all window wells in accordance with the requirements of 18 VSA § 1759. A window well is the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window well is the area that receives both the upper and lower window sashes when they are both lowered.

5

HOUSING -
Minimum Housing Amendments related to Lead Paint

(h) Owner's responsibilities.

(1) Posting.

(A) Owner(s) of pre-1978 rental housing units shall post in a prominent location, a poster that meets the requirements of 18 VSA § 1759 which states the importance of occupants reporting deteriorated paint and the information of whom to contact.

(B) Owner(s) of pre-1978 dwellings shall post in a prominent location a notice that informs abutting neighbors that exterior work which is subject to the provisions of section 18-112 is being done on their dwelling. The form of such notice will be provided by the Code Enforcement Office and use appropriate universal symbols to make the notice easily understandable.

(2) Educational pamphlet. Owner(s) or owner(s) representative, of pre-1978 rental housing units shall provide the Environmental Protection Agency (EPA) pamphlet 'Protect Your Family from Lead in Your Home', or any subsequent or superseding pamphlet, to tenants upon occupying the rental unit and annually thereafter.

(3) Certifications. All work performed to comply with the requirements of this section must be certified on a form provided by the Code Enforcement Office that the required work was performed using lead safe work practices and lead safe cleaning practices and that the work was done or supervised by a person who has been certified by the state department of health as having successfully completed the essential maintenance practices course. Owner(s) shall obtain and keep such certifications and provide a copy to the Code Enforcement Office upon request.

(4) Specialized cleaning at tenant turnover. Owner(s) of pre-1978 rental housing units shall perform a specialized cleaning of all horizontal interior surfaces, except ceilings, at tenant turnover as set forth in subsection (f). Certification that specialized cleaning was done must be made by the person doing the work and kept on file with the owner of the property.

(5) Annual cleaning of common areas. Owner(s) of pre-1978 rental housing units shall annually perform a specialize cleaning of all horizontal interior surfaces, except ceilings, in the common areas of the rental property accessible to tenants.

(6) Vermont compliance statements. Owner(s) of pre-1978 rental housing units shall comply with the compliance statement requirements of 18 VSA § 1759 (b) and shall provide a copy of the current statement to the Code Enforcement Office as proof of compliance upon request.

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(7) Disclosure of known lead based paint activities. Owner(s) of pre-1978 rental housing units shall disclose to tenants, records of all known lead based paint activities. A “lead based paint activity” means an inspection conducted by a lead inspector and/or risk assessment conducted by a lead risk assessor and/or lead paint hazard reduction activity, as “inspection” is defined in 17 V.S.A. § 1751 (b) (10), “lead inspector” is defined in 17 V.S.A. § 1751 (b) (17), and “risk assessment” is defined in 17 V.S.A. § 1751 (b) (24), and as “lead paint hazard” is a “lead hazard”, as defined in 17 V.S.A. § 1751 (b) (16), created by “lead based paint” as that is defined in “17 V.S.A. § 1751 (b) (12). Owner(s) of pre-1978 residential

6

HOUSING -
Minimum Housing Amendments related to Lead Paint

housing shall disclose all known lead based paint activities to perspective buyers. Buyers of the property shall keep records of all such known lead based paint activities. Owner(s) of pre-1978 rental properties undergoing activities that disturb more than 1 sf of painted surface(s) shall provide to the occupant(s) the Environmental Protection Agency (EPA) pamphlet ‘Protect Your Family from Lead in Your Home’, or subsequent or superseding pamphlet, and a description of the type of work that will take place, expected work dates and who to contact with questions about the work, at least 7 days prior to the commencement of work.

(8) Bare soil. Owners shall not allow bare soil to be accessible within the dripline of any residential building on which the original construction date was completed prior to January 1, 1978. Dripline means the area within 3 feet surrounding the perimeter of a building.

(i) Contractor’s obligations. In addition to complying with the Pre-Renovation Rule or any subsequent superseding rule, using lead safe work practices, lead safe cleaning practices and not using prohibited work practices, contractors that disturb more than 1 sf of painted surface(s) in pre-1978 dwellings shall provide to the owner(s) the Environmental Protection Agency (EPA) pamphlet ‘Protect Your Family from Lead in Your Home’, or subsequent or superseding pamphlet, and a description of the type of work that will take place, expected work dates and who to contact with questions about the work, at least 7 days prior to the commencement of work, in accordance with the Pre-Renovation Rule.

* Material stricken out deleted.

** Material underlined added.